

ATAMATE SOLUTIONS LIMITED
STANDARD CONDITIONS FOR PROVISION OF INSTALLATION SERVICES

1. INTERPRETATION

“Agreement” means the agreement made between the Company and the Contractor for the supply of the Deliverables in respect of a particular System, being the Quotation (as agreed by the Parties) together with these Conditions.

“Charges” means the Service Fees and the Hardware Price, and any additional fees and expenses chargeable pursuant to Condition 5.2 and/or 5.6.

“Commissioning Services” means the systematic testing of the System, following completion of the Second Fix Services, to verify that it functions in accordance with the agreed operational requirements, as further described in Condition 4.5.

“Company” means Atamate Solutions Ltd.

“Conditions” means these Standard Conditions, as may be updated by the Company from time to time.

“Construction Services” means services related to design and/or construction of the Property, including mechanical and/or electrical infrastructure, which will be provided by, or by a third party on behalf of, the Contractor or (under a separate agreement) by the Company, as the case may be.

“Contractor” means the person, company or firm who is contracted by the Owner to conduct or procure building works at the Property, including the purchase and installation of the System.

“Core Services” means the Design Services and the Commissioning Services (as applicable).

“Deliverables” means the Services and the Hardware Supply (as applicable).

“Design Services” means the preparation of the Installation Design, including the provision of associated information required for the construction of the System, as further described in the relevant Quotation.

“Functionally Test” means the testing of wiring to ensure that mechanical and/or electrical infrastructure connected to the Hardware activates as expected from manual overrides prior to the activation and commissioning of the System, in accordance with the schedule of functional tests provided by the Company.

“Hardware” means any equipment or hardware (including software) produced by (or on behalf of) the Company or its affiliate and supplied for use in the construction of the System, which may include (without limitation) sensors, faceplates, gateways, relays, circuitry controls and the hub computer.

“Hardware Price” means the sums payable by the Contractor for the Services, as outlined in the agreed Quotation, as otherwise amended by agreement between the Parties.

“Hardware Supply” means the supply of Hardware by the Company to the Contractor in accordance with these conditions, as further described in the Quotation.

“Installation Design” means the electrical design(s) for the installation of the Hardware (both ‘first fix’ and ‘second fix’), including parameters for the location of the Hardware, produced by the Company pursuant to the System Requirements.

“Order” means an order from the Contractor for Deliverables under the Agreement.

“Owner” means the owner of the Property in which the Contractor has been contracted to procure installation of the System.

“Parties” means the Company and the Contractor.

“Privacy Policy” means the Company’s Privacy Policy, as may be amended by the Company from time to time.

“Property” means the property owned by or under the control of the Owner in which the Contractor wishes to install the System, and to which the relevant Deliverables relate, as also set out in the relevant Quotation.

“Quotation” means the document describing the proposed Deliverables and setting out the related Charges.

“Second Fix Services” means those services (if any) in respect of the ‘second fix’ phase of the installation of the System that the Parties agree shall be provided by the Company, as further described in the Agreement .

“Services” means the Core Services and any Second Fix Services (as applicable).

“Services Fees” means the sums payable by the Contractor for the Services, as outlined in the agreed Quotation, as otherwise amended by agreement between the Parties.

“Site Services” means the Commissioning Services and any Second Fix Services, being Services that are provided by the Company at the Property, as further described in Conditions 4.5 to 4.7, and the relevant Quotation.

“System” means the Atamate integrated building automation system created and owned by the Company that the Contractor wishes to install at the Property, and in respect of which the relevant Deliverables shall be provided.

“System Requirements” means a descriptive specification provided by the Contractor for the required technical and operational output of the System within the Property.

“System Service” means a service that the Owner elects to receive from the Company which relates to the operation and benefit of the functionality of the System by the Owner, and which the Company shall supply to the Owner in accordance with a System Services Agreement.

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“System Services Agreement” means an agreement between the Company and the Owner for the provision of System Services.

2. APPLICATION OF TERMS

- 2.1 Unless otherwise agreed in writing by the Company, the Conditions shall apply to all the Company’s supply of (and the Contractor’s access to and use of) Services and Hardware Supply, and (subject to the relevant agreed Quotation) shall apply to the exclusion of any other terms or conditions which the Contractor purports to apply under any specification or other document.
- 2.2 No variation of the Conditions shall be effective unless expressly agreed in writing and signed on behalf of the Company.
- 2.3 A Quotation is open for acceptance for the period stated within it or, if no period is stated, for 30 days from its date. The Company’s acceptance of the Contractor’s Order, and the resulting Agreement, shall be subject to these Conditions (including, without limitation, Condition 9.2).
- 2.4 Except where the Contractor agrees to pay the full Charges in advance, there will be no contract formed between the Parties until credit approval has been granted to the Contractor. The Company will be entitled (without prejudice to any other remedy) to withhold delivery of any Deliverables if: (a) any amount is overdue in respect of any invoice issued by the Company, or (b) on the invoicing of the Deliverables, the Contractor’s credit limit (if any) would be exceeded. In determining the Contractor’s credit limit, the aggregate invoice value of all invoices issued by the Company which are outstanding, including unpaid accounts, will be taken into account.
- 2.5 Unless otherwise specified in any Quotation, the Hardware will be of a standard manufacture and design. All Hardware shall be subjected to standard testing prior to delivery. The Company reserves the right to make any changes in the specification of the Hardware which may be necessary in order to conform to any applicable safety or other statutory requirements.

3. THE DELIVERABLES

- 3.1 The Company agrees to perform the Deliverables in accordance with the Conditions. Certain features of the Services may be subject to additional guidelines, terms or rules, which will be posted on the Company’s website in connection with such features.
- 3.2 For the avoidance of doubt, the Agreement shall not relate to the provision of any Construction Services. Any provision of Construction Services by the Company shall be subject to a separate agreement between the Parties.
- 3.3 In delivering the Deliverables, the Company will exercise reasonable skill and care consistent with normal professional standards in compliance with applicable codes of conduct.
- 3.4 The Contractor represents and warrants that in respect of receiving the Deliverables: (a) all required information that the Contractor submits shall be truthful and accurate; and (b) the Contractor will maintain the accuracy of such information. All drawings provided by the Contractor to the Company must be of a suitable quality to reasonably allow the Company to provide the Services, and shall be in one of the following formats: *.rvt, .dwg, .ifc or .pdf*.
- 3.5 The Quotation and any subsequent Installation Design shall be based upon the System Requirements that shall be provided by the Contractor.
- 3.6 The Contractor agrees and understands, and shall be responsible for ensuring that the Owner understands, that –
- (a) there must be a System Services Agreement in place between the Company and the Owner in respect of the System prior to the Company providing the Commissioning Services. The Company shall have no liability for any delay in the provision of Commissioning Services attributable to the absence of such System Services Agreement;
 - (b) following completion of the Services, some or all of the System Services (including the Owner’s ability to use or control certain core functionalities of the System) will not be accessible to the Owner in respect of a System without: (i) a System Services Agreement between the Owner and the Company; (ii) a System that has been properly installed and fully commissioned; (iii) an enabled and supported internet device, such as a phone or tablet (required for some features and functionalities of the System Services); (iv) always-on broadband Internet access in the Property with bandwidth sufficient to support the System Services used; and (v) other system elements that may be specified by the Company from time to time; and
 - (c) in agreeing to provide the Services to the Contractor, the Company makes no commitment to enter into any System Services Agreement with (or provide any System Services to) the Owner.

4. PROVISION OF DELIVERABLES

- 4.1 Any Installation Design shall be delivered as an electronic document in ‘pdf’ format (unless otherwise agreed between the Parties).

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- 4.2 Subject to the other provisions of these conditions, the Company will use all reasonable efforts to meet its despatch and delivery forecasts, but any date given for delivery of Deliverables is an estimated date only. Time for delivery shall not be of the essence and the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Deliverables (even if caused by the Company's negligence). The Contractor is not entitled to reject delivery of any deliverable that is in compliance with the Agreement.
- 4.3 Subject to Condition 5.2, the Parties may (at the request of the Contractor) agree to amend the Deliverables following issue of a Quotation, or otherwise to reflect changing requirements or circumstances.
- 4.4 In addition to the Commissioning Services, the Parties may agree that the Company shall provide Second Fix Services as part of the Deliverables, which shall be reflected in the Quotation.
- 4.5 The Commissioning Services shall include support to the Contractor's nominated electrical contractor in interpreting the Installation Design (including explaining the wiring schedule and the naming convention).
- 4.6 For the avoidance of doubt, Site Services shall not include the provision of any on-site amendments to the Installation Design. Any such amendments shall be treated as a Change.
- 4.7 The provision of any Site Services shall be subject to the Contractor ensuring that –
- (a) the Company's personnel has access at the site to all water, electricity and other facilities as shall be required by the Company;
 - (b) the Property site is safe for the Company's visiting personnel, and that such personnel shall not suffer any abuse from any other persons on-site. Subject to the Company complying with all reasonable safety rules and instructions in force at the site, and without derogation from Condition 5.7, the Contractor shall be responsible for any costs incurred by the Company as the result of providing Site Services in an unsafe working environment. Accordingly, the Contractor agrees to indemnify the Company in respect of all costs, claims and liabilities of whatever nature for which the Company may become liable as a result of any non-compliance by the Contractor with the Health & Safety at Work Act in relation to the Property site at which the Company's personnel may provide Site Services from time to time; and
 - (c) the Company's visiting personnel receive all appropriate supervised access to the Property for the purposes of providing the Site Services.
- Except as may otherwise be agreed in writing, all Site Services shall be performed during the Company's normal working hours, which the Company shall notify to the Contractor from time to time. Without derogation from Condition 7, the Company shall not be responsible for any delay caused to the provision of the Site Services due to weather or any other circumstance beyond the Company's control.
- 4.8 Subject to Condition 6, any liability of the Company for non-delivery of the Deliverables shall be limited to replacing such Deliverables within a reasonable time. The Contractor shall notify the Company as soon as reasonably practicable after it becomes aware of any potential defect in the Installation Design or any supplied Hardware.
- 4.9 Where third party specialist consultants, contractors, sub-contractors or suppliers ("**Third Party Specialist**") are employed by the Contractor to design anything that would impact the Services (such as, without limitation, the Property or any system for delivery of utilities within the Property), the Contractor will hold the Third Party Specialist responsible for the proper performance of their work, and the Company will use its reasonable efforts to work with the Third Party Specialist to reflect or integrate their output (or the impact thereof) into the Installation Design. Where a third party contractor is employed by the Contractor to undertake construction or other work, the Contractor will hold such contractor responsible for its operational methods and for the proper execution of the work entrusted to it.
- 4.10 In respect of any Hardware Supply, risk in the Hardware will pass to the Contractor on delivery. Notwithstanding delivery of the Hardware and the passing of risk, until the Company receives full payment (in cleared funds) for all Hardware delivered to the Contractor in accordance with the Agreement, property in such Hardware will remain with the Company as legal and equitable owner. The Company may re-possess Hardware that has not been paid for by the due date. The Contractor shall visually inspect each delivery of Hardware ("**Delivery**") against the relevant Order and shall, within a period of two (2) working days from delivery of the Hardware concerned, inform the Company in writing of any omissions in the Delivery that are reasonably apparent on such visual inspection. If the Company agrees that the Delivery does not comply with the relevant Order, the Company will arrange for supply of replacement Hardware free of additional charge.
- 4.11 Delivery of Hardware shall be made to the Property, unless otherwise agreed. The Contractor shall be responsible for unloading Hardware immediately upon arrival unless otherwise agreed in writing. The Hardware may be delivered in instalments, and the Company shall be entitled to invoice for each instalment separately.
- 4.12 All Hardware shall be supplied with a warranty that shall expire on the sooner of-
- (a) eighteen (18) months from the date of despatch of the Hardware, and
 - (b) one (1) year from the date of commissioning of the System ,

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except that any replacement Hardware shall be warranted for ninety (90) days from delivery. Any other third party materials supplied by the Company shall be supplied with the relevant manufacturer's standard warranty.

- 4.13 Services are warranted for ninety (90) days from the date of completion. This warranty does not apply to any subsequent unrelated faults with the Property's infrastructure.
- 4.14 The above warranties do not cover any fault with the System, Hardware and/or Services caused by tampering, negligence by the Contractor (or the Owner) or any failure to follow the Company's instructions (or any supplied user guide, including as to storage) or these Conditions.

5. CHARGES AND PAYMENT

- 5.1 In consideration for the Deliverables provided by the Company, the Contractor will pay the applicable Charges to the Company, at the times specified in the relevant Agreement.
- 5.2 Any Changes shall require agreement of both Parties. In respect of any such Changes to the Services, then the Parties shall agree corresponding changes to the Charges.
- 5.3 Charges will be quoted in writing in the Quotation, and will be based on then prevailing costs of materials, overheads and wages, as well as currency exchange rates ("**Relevant Costs**"). Except as otherwise agreed in writing between the Parties, the Company reserves the right to increase without notice its prices and Charges prior to delivery of Deliverables to reflect any increase in Relevant Costs. All Charges and other sums payable by the Contractor in respect of the Deliverables are, unless otherwise stated, exclusive of VAT and any other similar duties or taxes, which shall be paid by the Contractor in addition to the Charges.
- 5.4 Payment of the Charges will be due in full within thirty (30) days of the invoice date in each case. Time of payment is of the essence. Payment must be made without deduction, set-off or counter-claim.
- 5.5 The Charges shall be invoiced follows:-
- (a) *on confirmation of an Order* – the Service Fees for the Design Services and 50% of the Hardware Price;
 - (b) *on despatch of the Hardware Supply* - 50% of the Hardware Price;
 - (c) *on completion of the Second Fix services (if any)* – the Service Fees for the Second Fix Services; and
 - (d) *on Commissioning of the System* – the Service Fees for the Commissioning Services.
- 5.6 The Company will charge additional expenses incurred in connection with any Site Services including travelling expenses (including vehicle mileage and/or public transfer fares), subsistence expenses (where overnight accommodation is required) and statutory fees (where these are paid by the Company acting as the Contractor's agent). The Company will maintain records of all such expenses and make these records available to the Contractor on reasonable request. Wherever possible, the Company will provide an estimate of the likely expenses associated with the agreed Site Services. Further to the foregoing and to Condition 6.9, if provision of any Services is delayed or suspended due to the Contractor's instructions (or lack thereof), or lack of relevant access to the Property, additional expenses may be charged to the Contractor including (without limitation) overtime working, storage of Hardware, enforced downtime or additional costs due to currency movements.
- 5.7 In providing Second Fix Services, the Company will take reasonable care to carry out any installation without causing unnecessary damage to the Property. The Company will make good any unnecessary damage to the property that is directly caused by its negligence while providing such Second Fix Services. However, the installation of the Hardware (including removing or dismantling existing fixtures and fittings) may cause damage and certain areas may need redecoration after the installation is finished. This is the Contractor's responsibility and the Company will not be liable for the cost of repairing any pre-existing faults or damage to the Property that the Company discovers while providing the Services. Accordingly, the Charges do not include -
- (a) the cost of removing dangerous waste materials (such as asbestos) which the Company becomes aware of during the provision of Site Services. Any such removal (and resulting delay to the Services) shall be the responsibility of the Contractor; and
 - (b) in respect of Second Fix Services, the cost of remediating any defects in the provision of 'first fix' services.
- 5.8 In respect of the provision of Site Services, and without prejudice to Condition 5.6, in the event that the Company is required to spend time at the Property additional to the period agreed in the Quotation which is due to (i) Changes, (ii) a breach of Condition 3.4 by the Contractor or (iii) any other reason that is not the fault of the Company, then additional fees shall be charged on an hourly rate at the Company's standard tariff applicable at the time, as shall be communicated to the Contractor from time to time.
- 5.9 In the event that the Contractor fails to pay all Charges when due and payable, and without derogation from Condition 5.10, the Company shall be entitled to restrict, or deny all, access of the Contractor to the final Deliverables, and/or any related services that the parties have contracted to be provided by the Company or its affiliate, until payment has been made in full. Without derogation from the foregoing, any Charges or VAT remaining unpaid at the expiry of thirty days from the date of submission of the relevant invoice will thereafter accrue interest calculated on a daily basis at the higher of (a) the rate specified by the Late Payment of

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Commercial Debts (Interest) Act 1998 from time to time and (b) a compound rate of eight (8) percent per annum above the current Bank of England base rate.

- 5.10 The Company reserves the right to terminate an Agreement forthwith on notice to the Contractor in the event of delay by the Contractor in making any payment of Charges due thereunder or under any other agreement between the Company and the Contractor. Any future receipt of Deliverables by the Contractor thereafter shall be subject to a separate agreement with the Company.

6. LIMITATION OF LIABILITY

- 6.1 Subject to Condition 4, the following provisions set out the entire financial liability of the Company to the Contractor in respect of:

- (a) any breach of these conditions;
- (b) any use made by the Contractor of any of the Deliverables; and
- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with any Agreement.

- 6.2 All conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from any Agreement. All liability that is not expressly assumed in these conditions is hereby excluded. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action. For the purposes of this clause the Company includes its employees, sub-contractors and suppliers. The Contractor acknowledges that the Company's employees, sub-contractors and suppliers shall have the benefit of the limits and exclusions of liability set out in this clause in terms of the Contracts (Rights of Third Parties) Act 1999.

- 6.3 Nothing in these conditions shall exclude or limit liability for fraudulent misrepresentation. While the Company uses every effort to ensure that the System (as installed in accordance with the Installation Design) meets the output requirements set out in the System Requirements, the Contractor understands and agrees that it is the Contractor's responsibility to ensure that the System is fit and suitable for its purpose in the conditions in which the System will be operated. The Company accepts no liability for any alleged underperformance of the System caused by limitations inherent in the Property (including, without limitation, its layout and/or the layout of the hardware with which it is intended to interact). The Company will not be responsible for the cost of repairing or replacing parts of the Property's existing system if it develops a fault following installation of the System, unless such fault is directly attributable to the Services. Further, the Company will not be responsible if the Property's central heating system does not work properly because the Property's water supply becomes inadequate or the water pressure varies.

- 6.4 Acceptance of Orders and completion of delivery of the Deliverables are subject to such: (a) materials, components and services (including from sub-contractors nominated by the Contractor whereby the Contractor will also procure timely performance of such nominated sub-contractor(s)), and specifications, information and other material, being available (or being made available) to us as will enable us to proceed with and complete the provision of the Deliverables without interruption, and (b) delays caused by third party contractors nominated by the Contractor.

- 6.5 Subject to Condition 6.6, the Company shall not in any circumstances be liable for any indirect, contingent or consequential loss, damage or injury to the Contractor. The Company shall not be liable in respect of any claim made against the Contractor by any third party (including, without limitation, the Owner), and the Contractor shall indemnify the Company against any claims brought by third parties against the Company relating to the Deliverables. These Conditions are in substitution for and (to the extent permitted by English Law) exclude all conditions, warranties and terms as to satisfactory quality and fitness, express or implied and conferred by statute, common law or otherwise.

- 6.6 Nothing in these Conditions excludes or limits the liability of the Company:

- (a) for death or personal injury caused by the Company's negligence or negligent omission; or
- (b) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability.

- 6.7 Subject to Condition 6.6, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of an Agreement shall be limited to an amount never to exceed the Charges actually paid (if any) by the Contractor to the Company pursuant to such Agreement.

- 6.8 If the Contractor claims that any Deliverables do not comply with the Agreement, the Contractor must, within 30 days of identification of the alleged defect, give the Company written notice giving details of the alleged non-compliance and, if requested, return any allegedly defective Hardware to the Company properly packed, carriage paid. Subject to this Condition 6, the Company will replace Deliverables which it accepts do not comply with the Agreement. Where risk in Hardware has not passed to the Contractor, the Company will at its discretion repair, recover or replace defective Hardware: (a) for damage in transit provided (i) that the Company is given written notice of such damage promptly following delivery, (ii) the Company is given the opportunity to inspect the allegedly defective Hardware; and the Contractor will make no further use of the Hardware and will not attempt to alter or repair the Hardware notwithstanding its general duty to mitigate

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damages, and (b) for non-delivery provided that where the Company has notified the Contractor of despatch of the Hardware, the Company is given written notice of non-delivery promptly on the Hardware not being delivered at the estimated time of arrival.

- 6.9 Other than in respect of any Second Fix Services provided by the Company, the Contractor agrees that the Property (including foundations, access and supporting structures, structural or other building alterations, and the provision of appropriate electrical supply) and the System must be constructed and Functionally Tested (including 'first fix' and, unless the Company will be providing Second Fix Services, 'second fix') by appropriately qualified electricians and builders prior to provision of the Site Services, including in accordance with the Installation Design, and that it shall be the responsibility of the Contractor to ensure that such construction is conducted in accordance with all applicable electrical, building and other regulations. Except as may otherwise be agreed between the Parties under a separate contractual arrangement, the Contractor agrees that the Company shall have no responsibility for the Construction Services. The Contractor shall make proper provision in the overall construction schedule at the Property for the Company to conduct the Site Services in one contiguous visit to site, without interruption, and the Company shall have no liability for any delay in the provision of Site Services attributable to the Contractor's breach of this Condition 6.9. For the avoidance of doubt, the Company shall have no responsibility for testing and compliance in respect of applicable electrical regulations (including, without limitation, the Electrical Wiring Regulations).
- 6.10 The Contractor agrees and understands that –
- (a) the Quotation is produced to the best of the Company's knowledge, based upon the information contained in the System Requirements, and that Conditions 3.4 and 5.2 shall apply. The Contractor shall be responsible for ensuring the accuracy of the terms of any Order (including any applicable System Requirements) submitted by the Contractor and for giving the Company any necessary information within a sufficient time to enable the Company to perform. Prices quoted are for the conditions stipulated in the Quotation; and
 - (b) unless otherwise stated, any Installation Designs supplied by the Company are not to scale. Any indicated dimensions shall be approximate and may vary, and the Contractor shall procure that its builders and electricians are aware of the foregoing.
- 6.11 Without derogation from Conditions 6.3 and 6.12, the Company shall have no liability hereunder for any failures or underperformance in the operation of the System following receipt of any Deliverables, arising from –
- (a) any failure of the Contractor to comply with Conditions 6.9 or 6.10 above;
 - (b) any errors or lack of fitness for purpose in the Installation Design resulting from information contained in the System Requirements; or
 - (c) any other failure or defect in the construction and/or commissioning of the System not resulting directly from any defect in the Installation Design (including from any failure to install (or procure the installation of) the System and any related sensors, components and peripherals in accordance with, or to meet any other requirements specified in, the Installation Design), except to the extent that the foregoing construction and/or commissioning was conducted by the Company as part of the provision of Second Fix Services or otherwise under a separate agreement; or
 - (d) any changes made to the Installation Design after the date of delivery to the Contractor, other than as have been agreed with (or carried out by) the Company; or
 - (e) any failure of the System (or any supplied Hardware or other related materials) to be used in accordance with any instructions or manual(s) supplied therewith, including any user guides, or from performance problems caused by any user's smart device, computer, internet browser or internet connection, rather than the System itself; or
 - (f) any failure of the System caused by damage to (i) Hardware incurred after delivery to the Contractor, or (ii) any other materials (including cables) used in the construction of the System (other than by the Company); or
 - (g) any interruption in the Contractor's internet or mobile network connection (including, without limitation, affecting the communication to the Company of required usage data in respect of the System and/or the Property).

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- 6.12 Unless explicitly providing a “guarantee”, the Company does not guarantee or promise any specific level of energy savings or other monetary benefit from the use of the System (as installed in accordance with the Installation Design) or any feature thereof. Actual energy savings and monetary benefits vary depending on factors beyond the Company’s control or knowledge, including particular characteristics (design or otherwise) of the Property and/or layout of the utility infrastructure (or changes thereto).
- 6.13 Smart, connected or other devices and related services (“**Third-Party Products and Services**”) that are not designated by the Company as compatible with the System may not work with the System, or may have limited features or functionality, even if designed, specified or marketed to operate using the same or similar standards or means of communication. The Contractor agrees only to use Third-Party Products and Services designated by the Company in the Installation Design (or otherwise) as compatible with the System.
- 6.14 The Contractor accepts and understands that the Contractor’s ability to use or control certain core functionalities of the System will rely upon the Contractor contracting to receive certain software services from the Company (or its affiliate) in respect of the System, and that not contracting to receive such services may in turn restrict the Contractor’s ability to control certain utilities of the Property for as long as such control remains integrated into the System.

7. FORCE MAJEURE

The Company reserves the right to defer the date of delivery, or reduce the scope, of the Deliverables ordered by the Contractor or to cancel the relevant Agreement (without liability to the Contractor) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either Party’s workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials (a “**Force Majeure Event**”). If any Force Majeure Event occurs which affects or may affect the performance of any of the Company’s obligations under an Agreement, it shall notify the Contractor forthwith as to the nature and extent of the circumstances in question. The Company shall not be deemed to be in breach of such Agreement, and shall not otherwise be liable to the Contractor, by reason of any delay in performance, or the non-performance, of any of its obligations under the Agreement, to the extent that the delay or non-performance is due to any Force Majeure Event, and the time for performance of that obligation shall be extended accordingly. If the Force Majeure Event in question continues for a continuous period in excess of fourteen (14) days, the Contractor shall be entitled to give notice in writing to the Company to terminate the relevant Agreement.

8. TERM, CANCELLATION & TERMINATION

- 8.1 Each Agreement shall remain in force until delivery to the Contractor of the relevant Deliverables, unless terminated earlier in accordance with the terms hereof.
- 8.2 Subject to the terms of the relevant Agreement (including Condition 8.5), the Contractor may cancel, suspend or terminate any or all of the Deliverables at any time by contacting the Company in writing. Cancellation or termination by the Contractor of the Deliverables shall constitute termination of the Agreement. If provision of Services is suspended because of the Contractor’s instructions or lack of instructions, the Company reserves the right to treat this as a cancellation by the Contractor and this Condition 8 will apply.
- 8.3 In the event of any material breach of these conditions by a Party, the other Party shall be entitled to terminate the relevant Agreement with immediate effect.
- 8.4 In addition to its other rights under these conditions, the Company reserves the right to cancel or terminate some or all of the Deliverables or any or all Agreements at any time by sending 7 days’ notice in writing to the Contractor’s last known address —
- (a) if the Contractor (or any person acting on behalf of the Contractor) harasses or uses abusive, vexatious or threatening behaviour towards the Company’s staff or otherwise behaves in a manner that makes it inappropriate for the Company to continue provision of the Deliverables; or
 - (b) if the Contractor or anyone acting for the Contractor deliberately or recklessly provides the Company with false information when agreeing to the terms of any agreement, or when making changes to it, that would either impact the terms and conditions of the agreement or the Company’s ability to deliver the Services; or
 - (c) if (i) the Contractor goes into liquidation or is otherwise insolvent (ii) the Contractor has an administration order made against it, (iii) a distress or execution is levied or enforced upon any of the Contractor’s assets and is not paid out or discharged within 14 days, (iv) an encumbrancer takes possession of or a receiver is appointed over the Contractor’s undertaking, property or assets, (v) the Contractor stops payment or ceases or threatens to cease to carry on its business or to pay its debts as and when they fall due, or (vi) if any equivalent thing happens.

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- 8.5 On cancellation, suspension or termination by the Company pursuant to Conditions 8.3 or 8.4, or by the Contractor pursuant to Condition 8.2, the Company –
- (a) will be entitled immediately to recover (i) the full price for any Hardware already delivered and not paid for, and (ii) fees for all work completed up to that time, calculated if necessary on a pro-rata basis for any partial services, and for reimbursement of expenses necessarily incurred in connection with work up to the time of suspension or termination, or arising as a result of the suspension or termination. The foregoing shall include any non-cancellable services and commitments entered into by Company in connection with the Service being terminated;
 - (b) will be entitled to apply a 20% restocking charge in relation to any correctly supplied Hardware that is returned to the Company by the Contractor; and
 - (c) the Company will not return any payments already received from the Contractor for any correctly delivered Deliverables.

9. GENERAL

- 9.1 If any provision of these Conditions (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 9.2 These Conditions, along with the relevant Agreement, constitute the entire agreement between the Company and the Contractor regarding the purchase and use of the relevant Deliverables. No other oral or written agreement, representation, promise, undertaking or understanding of any kind whether made by the Company's agents, employees or any other person (unless expressly accepted in writing by the Company) shall vary, supersede or operate as a waiver of the Conditions. Failure or delay by the Company in enforcing or partially enforcing any provision of an Agreement shall not be construed as a waiver of any of its rights under the Agreement.
- 9.3 Any waiver by the Company of any breach of, or any default under, any provision of an Agreement by the Contractor shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Agreement.
- 9.4 The obligations in Conditions 5.4, 5.5, 5.6, 5.9, 6, 8.5, 9, 10 and 11 will survive any expiration or termination of these conditions.
- 9.5 Each Agreement is personal to the Company and the Contractor. Subject to Condition 6.2, the Parties to any Agreement do not intend that any term of the Agreement shall be enforceable (whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise) by any person that is not a party to it, including – without limitation – the relevant Owner.
- 9.6 The formation, existence, construction, performance, validity and all aspects of any Agreement shall be governed by English law and the Parties submit to the exclusive jurisdiction of the English courts.
- 9.7 The Company and the Contractor agree to seek to resolve all disputes and claims that arise from or relate to these conditions, or to the Deliverables in any way, ("**Disputes**") by prompt discussion in good faith, except for claims arising from bodily injury. This discussion shall not be a pre-condition to the commencement of legal proceedings before any court. This procedure is invoked by either Party giving notice to the other setting out the issues in the Dispute and referring to this Condition and, unless the Parties agree otherwise, shall be treated as having been exhausted if the Dispute has not been resolved within 10 Business Days after the giving of the notice. This Condition does not preclude either of the Company or the Contractor from bringing an individualised action in small claims court, or from seeking an individualised preliminary injunction or temporary restraining order, in any court that has jurisdiction.
- 9.8 The Company's Privacy Policy shall apply to the Agreement and to all services (including the Services) provided by the Company to the Contractor. The Privacy Policy is hereby incorporated by reference into the Agreement, and the Contractor agrees to accept and abide by the Privacy Policy in respect of any personal data exchanged as part of the Services.

10. CONFIDENTIALITY

- 10.1 All drawings, plans, specifications, technical or commercial know-how, inventions, processes, initiatives, or any information concerning the Company's business, its products or prices, or any other documents prepared by the Company or arising in the provision of the Services and which the Contractor may have obtained from the Company, are all deemed to be confidential information ("**Confidential Information**") and proprietary to the Company and such Confidential Information shall remain the Company's property and shall be deemed to have been imparted by the Company in trust to the Contractor for the Contractor's sole use. The copyright in such Confidential Information vests with the Company. The Contractor shall not attempt to decompile or reverse engineer any software contained in Hardware or the System.
- 10.2 The Contractor acknowledges that all intellectual property rights used or embodied in the Hardware are and will remain the sole property of the Company (or any other party that is identified on the Hardware). The Company accepts no liability for any claims against the Contractor for infringement of third party intellectual

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property rights arising from the use, possession, resale or offering for resale of the Hardware and/or the System.

11. COMMUNICATIONS

All communications between the Parties about any Agreement shall be in writing and delivered by hand or sent by pre-paid first class post or sent by e-mail to the Company) at its registered office or to the Contractor at its registered office if it is a company or to any address of the Contractor set out in any document which forms part of the Agreement or such other address as shall be notified to the Company by the Contractor.